

**Written Remarks of Douglas S. Ellenoff,
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**“Make It in America: What’s Next?” Second Hearing
PANEL TWO: New Economic Sectors**

Mr. Hoyer, thank you and your staff for the invitation to be here today, I am pleased to share my views with you and House Democrats regarding the state of the Crowdfunding movement in the US and its impact on entrepreneurship and capital formation. Included in my remarks will be discussion about both securities-based crowdfunding, a result of the JOBS Act in April 2012, as well as, but to a lesser extent donations/rewards and pre-order crowdfunding.

My name is Doug Ellenoff and I am a founding partner of a transactional and finance law firm, which employs nearly 100 people. The Firm represents close to 60 SEC registered public companies; we are routinely one of the most active IPO law firms; we also have established and improved several alternative finance programs aimed to give greater access to capital for entrepreneurs. For the last 3 years, we have devoted significant resources to the support of the crowdfunding movement; have met numerous times with the SEC and FINRA staffers charged with the responsibilities of writing and implementing the various crowdfunding provisions, particularly Title III; met with State and foreign securities regulators, traveled extensively throughout the US educating audiences about the risks and benefits of crowdfunding and now represent dozens of crowdfunding platforms. We believe that we have the most active law firm crowdfunding practice in the world. We have added 3 securities professionals to service this area in the last 12 months. As a result of the anecdotal benefits of crowdfunding for women, our Firm has established a Women’s Entrepreneurship Initiative, as well as, funded and completed an online application called iDisclose, which enables an entrepreneur to draft an institutional quality securities disclosure document at half of the typical time and cost. We think Congress should be proud of the JOBS Act, its implementation and impact on the entrepreneurship ecosystem—here is why:

Since Title II of the JOBS Act was implemented in September 2013 (i.e. slightly less than 2 years ago), both offline and online, “accredited investor” only crowdfunding has successfully enabled more than a couple thousand issuers to raise billions dollars. As a reminder, Title II of the JOBS Act permits entrepreneurs to Generally Solicit and Market their investment opportunity to the public. This is a significant departure from what was previously permitted as exempt private placement activity under the old SEC rules, which prohibited public solicitation of investors—this would have been deemed to be a public offering and thus required registration with the SEC. You should consider each one of the funded 506c opportunities under Title II to be a meaningful success, in that it fulfills the aspirations of an entrepreneur and either immediately creates jobs or may very well do so in the future—but certainly wouldn’t have had a chance without the availability of Title II. Keep in mind, as we understand it, the #1 use of proceeds in most offerings seems to be either hiring employees or purchase equipment. Some observers suggest that Title II 506c offerings in the first couple of years are relatively small compared to the use of the historic securities law private placement pathway, known as 506b Reg D offerings. Approximately 8.5% of all Reg D deals in the first 12 months after 506c became available, but I would strongly suggest that is a false comparison, since all new initiatives in a mature market are a fraction in the beginning. At the dawn of the internet, one could similarly observe that online retailing was a small percentage of overall retail sales, and now that consumer comfort with online shopping has grown, the impact has become sizable. So too will 506c. As law firms, investment banks and even regulators accept this new reality there will be an increasing percentage. Interestingly, the data seems to suggest that the number of

“accredited investors” willing to participate in the exempt markets and provide investment capital to entrepreneurs, due to 506c presumably, increased by 50%, adding more than 100,000 new investors. Just as importantly, from a substantive point of view, many of those entrepreneurs would have had no success raising capital had the limitations of traditional securities laws remained as the only alternative for them. Consequently, I would posit that the better analysis, is that from a standing start, in just 2 years, thousands of entrepreneurs who might never have had the ability to raise any capital did and are now off to the races building their businesses.

Dozens of entrepreneurial projects have been funded in most States due to Title II. In the first year, there were 1,931 recorded 506c financings; 51 were specifically Manufacturing; 19 Agricultural; 98 Oil and Gas; 32 Restaurants and 33 Retailing. While California, Texas and NY based offerings certainly dominated statistically, with 813 of the closed financings, there is significant participation from many other States, with all States, Districts and Territories having offerings seeking to avail themselves of the benefits of Title II. Arizona had 44 closed deals; Colorado 52; Georgia 40; Illinois 65; Missouri 42; Nevada 26; Oregon 21; Pennsylvania 41; Utah 56; Virginia 25 and Washington 31. Surprisingly, much of the Title II activity has been in all different kinds of real estate investing, which while it might not directly create many jobs (except for development deals), it certainly has given investors much greater investment choice in current return cash flowing properties, throughout the US and grows the economy in other ways. While the geographic distribution is meaningful, it is certainly impacted by which States by entrepreneurial happenstance have had crowdfunding platforms begin to operate in those particular states and facilitate the formation of capital in their community-- we would expect that the geographic distribution will be even greater in the future.

All of this activity and excitement is not to suggest that there won't be failures, there will be, but the point of the legislation wasn't to stop failures but to enable legitimate and deserving entrepreneurs to raise capital more easily and build companies that wouldn't have otherwise had the chance—which it has facilitated quite successfully.

While critics of many of the crowdfunding provisions, who had genuinely held concerns for fraud (actually not very different from the early days of the online retailing) these concerns haven't been proven correct. So far, there is no statistical indication of support for this as being a problem and in discussions with regulators they seem to confirm this to be true as well. While there are certainly worrisome stories out of the non-securities based crowdfunding programs, the issue seems limited in nature and certainly receiving the proper policing by the participating community members and regulators. But again, please don't confuse securities-based crowdfunding, which is highly regulated activity at both the Federal and State levels, with donations, rewards and pre-order crowdfunding which is outside their jurisdiction. Neither is problematic and the securities in particular, so far, seems to be operating responsibly.

Title IV of the JOBS Act, also referred to as Reg A+ or the mini-IPO only recently got the green light from the SEC in June. Reg A+ has received much attention from entrepreneurs, since this provision enables entrepreneurs to raise capital from both accredited investors as well as unaccredited investors. Since the rules were only recently finalized, there haven't been any successful Reg A+ financings, although there have been quite a few submissions to the SEC. Unlike a Title II financing, which is an exempt offering and doesn't require an SEC submission, a Reg A+ offering requires the filing of a Form 1-A and takes several months to clear SEC review and comments. Early indications are that like Title II, Title IV has a broad applicability for entrepreneurs and that it's utility will become evident over the next year. Each of these new and profound changes to the securities laws is a very positive step for entrepreneurs that has a multiplier effect. You should feel very good about the JOBS Act and what it has accomplished, not only because entrepreneurs have an easier and often less burdensome pathway to raise financing, but just as importantly the jobs growth as a result of establishing an entire new capital formation ecosystem created to facilitate and support those financings—I am thinking about the scores of people who also now work for the website developers who create the funding

platforms, the funding platforms that raise the capital, the engineers who have created the online due diligence tools, the disclosure application like our iDisclose PPM tool, as well as the host of other never created low cost solutions needed to support these new means of raising capital.

The JOBS Act in and of itself has spurred innovation in the capital formation business.

The lone remaining provision of the JOBS Act remaining to be available to entrepreneurs is the true crowdfunding provision, known as Title III. Title III will enable entrepreneurs to raise up to \$1 million dollars without registrations with the SEC, from both accredited and unaccredited investors, but only through a FINRA recognized funding portal. Title III specifically limits how much any investor may invest in any deal or deals so they may not lose too much. We are confident that Title III, when the final rules are approved, will inevitably continue the benefits to entrepreneurs embodied in the other JOBS Act provisions, the states that they reside in and investors who would like to participate— without the fears or concerns raised by regulators and investor protection advocates having a statistically different character than other securities programs.

Thank you for the opportunity to testify today, I am available to answer any of your questions